

1 HB711
2 107521-2
3 By Representatives Martin and Hill
4 RFD: Constitution and Elections
5 First Read: 12-MAR-09

SYNOPSIS: Under existing law, there is no process for providing secure overseas absentee voting by electronic transmission.

This bill would establish the Alabama Electronic Overseas Voting Advisory Committee to advise whether a secure electronic means may be established for use by the Secretary of State in conducting overseas absentee voting.

This bill would provide for the duties of the absentee election manager in transmitting absentee ballots, receiving absentee ballots, and recording voted ballots electronically.

This bill would require the use of and specify the form for an overseas voter certificate.

This bill would also provide for the adoption of rules to implement and ensure the security of secure overseas absentee voting by electronic transmission by the Secretary of State.

A BILL

1 TO BE ENTITLED

2 AN ACT

3
4 Relating to elections and the provision of secure
5 overseas absentee voting by electronic transmission; to
6 establish the Alabama Electronic Overseas Voting Advisory
7 Committee to advise whether a secure electronic means may be
8 established for use by the Secretary of State to conduct
9 overseas absentee voting; to provide for the duties of the
10 absentee election manager in transmitting and receiving
11 ballots electronically; to provide for an overseas voter
12 certificate; and to provide for the adoption of rules by the
13 Secretary of State to implement this act and ensure the secure
14 electronic transmission of ballots.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. For the purposes of this act, the
17 following terms shall have the following meanings:

18 (1) COMMITTEE. The Alabama Electronic Overseas
19 Voting Advisory Committee.

20 (2) OVERSEAS VOTER. Includes all of the following:

21 a. A member of the uniformed services while in the
22 active service, or an eligible spouse or dependent of such a
23 member, who is a permanent resident of the state and is
24 temporarily residing outside of the territorial limits of the
25 United States and the District of Columbia, who is qualified
26 and registered to vote as provided by law.

1 b. A member of the Merchant Marine of the United
2 States, or an eligible spouse or dependent of such a member,
3 who is a permanent resident of the state and is temporarily
4 residing outside of the territorial limits of the United
5 States and the District of Columbia, who is qualified and
6 registered to vote as provided by law.

7 c. Any other citizen of the United States who is a
8 permanent resident of the state and is temporarily residing
9 outside of the territorial limits of the United States and the
10 District of Columbia, who is qualified and registered to vote
11 as provided by law.

12 Section 2. (a) The Alabama Electronic Overseas
13 Voting Advisory Committee is created to advise whether secure
14 electronic means may be established for conducting absentee
15 voting for overseas voters and to advise and assist the office
16 of the Secretary of State in the establishment, testing, and
17 implementation of absentee overseas balloting by secure
18 electronic means.

19 (b) The membership of the committee shall include
20 the Secretary of State as chair, a representative of the
21 Alabama Sheriff's Association appointed by that association, a
22 representative of the Alabama Probate Judge's Association
23 appointed by that association, a representative of the Alabama
24 Circuit Clerks Association appointed by that association, a
25 representative of the Alabama National Guard appointed by the
26 Adjutant General, Chair of the Senate Constitution, Campaign
27 Finance, Ethics, and Elections Committee, Chair of the House

1 Constitution and Elections Committee, a representative of the
2 county boards of registrars appointed by the Secretary of
3 State, and a representative of the Association of County
4 Commissions of Alabama appointed by that association. The
5 membership of the committee shall be inclusive and reflect the
6 racial, gender, geographic, urban/rural, and economic
7 diversity of this state. Members of the committee shall be
8 appointed within 30 days after the effective date of this act
9 and shall serve without compensation but shall be eligible for
10 reimbursement for necessary and reasonable expenses incurred
11 in the performance of their official duties.

12 (c) The chair of the committee shall convene an
13 organizational meeting of the committee within 45 days after
14 the effective date of this act.

15 Section 3. (a) If the Secretary of State determines
16 a secure electronic means may be established for conducting
17 overseas absentee voting, the Secretary of State, with the
18 advice of the committee, shall promulgate rules to provide
19 that option to eligible overseas voters. The rules for
20 conducting overseas absentee voting by secure remote
21 electronic transmission shall authorize the absentee election
22 manager to accept requests for absentee ballots and voted
23 absentee ballots from overseas voters and shall provide a
24 process for verifying the identity of a voter, ensuring the
25 security of the transmission, accepting a voted ballot, and
26 recording each ballot received.

1 (b) Before overseas absentee voting may be conducted
2 pursuant to this act, all of the following requirements shall
3 be satisfied:

4 (1) The Secretary of State, by rule adopted pursuant
5 to the Alabama Administrative Procedure Act, shall provide all
6 of the following:

7 a. A timetable and process for notifying eligible
8 overseas voters of the availability of voting an absentee
9 ballot by secure remote electronic transmission.

10 b. Detailed instructions to be given eligible
11 overseas voters regarding voting by secure remote electronic
12 transmission.

13 c. A timetable for the conduct of elections
14 utilizing the electronic transmission of absentee ballots.

15 d. A method of providing blank ballots to overseas
16 voters.

17 e. A method and criteria for returning overseas
18 voted absentee ballots to the absentee election manager.

19 f. Procedures for ensuring the physical security of
20 the remote voting site for receipt and transmission of blank
21 and voted absentee ballots.

22 (2) The Secretary of State, by rule adopted pursuant
23 to the Alabama Administrative Procedure Act, shall establish
24 minimum criteria to ensure the secure remote electronic
25 transmission of election materials including, but not limited
26 to:

1 a. The use of encrypted information, including, but
2 not limited to, ballots, passwords, and both public and
3 private encryption keys.

4 1. A public or private key encryption methodology
5 shall include key generation under the control of the
6 Secretary of State.

7 2. A password protected private key shall be held
8 secure by the county canvassing board and never transmitted or
9 otherwise divulged by any means.

10 3. A password protected private key that is unique
11 for each eligible overseas voter to digitally sign the ballot
12 for transmission and storage before decryption by the
13 canvassing board.

14 b. The capability for auditing the secure remote
15 voting application source code, and the capability for this
16 application to be executed on a clean computer which, at a
17 minimum, has a baseline operating system on its hard disk and
18 no other software or driver installed.

19 c. The capability to secure access to and from the
20 overseas voter and the voting server or the voting database
21 platform, or both.

22 d. The verification of the authenticity of the
23 identity of the overseas voter before granting access to the
24 transmission of election material.

25 e. The capability for the overseas voter to
26 determine that the secure transmission of election material
27 was successful.

1 f. The capability for the absentee election manager
2 to segregate rejected ballots before decryption.

3 g. The capability to record election material
4 received by secure transmission.

5 h. The capability for the absentee election manager
6 to produce a marked paper ballot for each vote cast by secure
7 transmission.

8 Section 4. (a) A request for an overseas absentee
9 ballot shall include all of the following information:

10 (1) The name of the voter requesting the ballot.

11 (2) The legal Alabama residence of the voter.

12 (3) The date of birth of the voter.

13 (4) One of the following:

14 a. An APO/FPO or other deliverable overseas address,
15 if the overseas voter requests that the ballot be mailed or
16 sent by commercial ground or air carrier.

17 b. A facsimile machine number where return
18 information shall be received, if the overseas voter requests
19 that the ballot be faxed. If the voter requests facsimile
20 transmission, his or her signature is also required.

21 c. An electronic mail address, if the overseas voter
22 requests that the ballot be transmitted pursuant to electronic
23 mail.

24 d. A signed application for an electronic ballot if
25 the overseas voter requests that the ballot be transmitted or
26 accessed by other secure electronic means approved by rule of
27 the Secretary of State.

1 (b) A request for a ballot to be faxed to an
2 overseas voter shall remain valid for 12 months, unless a
3 shorter length of time is requested by the overseas voter.

4 (c) The absentee election manager and the staff of
5 the absentee election manager shall ensure the confidentiality
6 of all voted ballots, including voted ballots received by
7 facsimile.

8 Section 5. (a) Upon receipt of a request for an
9 overseas absentee ballot, the absentee election manager shall
10 verify the information provided and, upon determining that the
11 overseas voter is qualified and registered to vote in the
12 election, provide the voter with all of the following pursuant
13 to the means requested by the voter in Section 4:

14 (1) An absentee ballot.

15 (2) Instructions for voting.

16 (3) Instructions for returning the voted ballot.

17 (4) An overseas voter certificate.

18 (b) For each request for an overseas absentee
19 ballot, the absentee election manager shall record the date of
20 the request, the means by which the ballot was sent to the
21 overseas voter, and the date the absentee ballot was
22 transmitted to the overseas voter.

23 (c) The absentee election manager shall ensure that
24 all transmitting and receiving equipment is located in a
25 secure location, with access limited to employees of the
26 absentee election manager. The absentee election manager shall

1 also ensure accuracy in transmitting overseas absentee ballots
2 to addresses and numbers provided by overseas voters.

3 (d) The overseas voter shall ensure the security of
4 his or her transmitting and receiving equipment.

5 Section 6. (a) An overseas voter may return a voted
6 ballot by facsimile, mail, commercial ground or air carrier,
7 or by other secure remote electronic access in accordance with
8 Section 9. Voted ballots returned by standard electronic mail
9 shall be rejected.

10 (b) An overseas voter who returns a voted absentee
11 ballot by facsimile shall send the ballot and his or her
12 overseas voter certificate directly to the facsimile number
13 provided by the absentee election manager or a number provided
14 by the Federal Voting Assistance Program of the Department of
15 Defense. To be counted, an overseas absentee ballot shall be
16 received by the absentee election manager no later than 12:00
17 noon on election day.

18 (c) An overseas voter who returns by mail a voted
19 ballot initially received by him or her pursuant to electronic
20 mail or facsimile, shall seal the ballot in an unmarked
21 envelope, or security envelope, and place both the sealed
22 security envelope and his or her overseas voter certificate in
23 a separate ballot transmittal envelope for mailing. The ballot
24 transmittal envelope should be marked "Absentee Ballot
25 Enclosed."

26 (d) An overseas voter who submits a voted absentee
27 ballot by secure remote electronic transmission shall send an

1 electronic version of his or her overseas voter certificate
2 directly to the absentee election manager. A paper version of
3 the overseas voter certificate may be placed in a separate
4 ballot transmittal envelope for mailing. To be counted, an
5 overseas absentee ballot submitted electronically shall be
6 received by the absentee election manager no later than 12:00
7 noon on election day.

8 Section 7. An overseas voter certificate shall
9 substantially conform to the following format:

10 "OVERSEAS VOTER CERTIFICATE

11 "I, _____ (print name), swear or affirm,
12 under penalty of perjury, that:

13 "1. I am a member of the uniformed services or
14 Merchant Marine on active duty temporarily residing outside
15 the United States; or the eligible spouse or dependent of such
16 a member temporarily residing outside the United States; or a
17 United States citizen temporarily residing outside the United
18 States; and

19 "2. I am a United States citizen, at least 18 years
20 of age, as of the date of the applicable election, and
21 eligible to vote in the requested jurisdiction; and

22 "3. I have not been convicted of a disqualifying
23 felony or been adjudicated mentally incompetent or, if I have,
24 my voting rights have been reinstated; and

25 "4. I am not registering, requesting a ballot, or
26 voting in any other jurisdiction in the United States, except
27 the jurisdiction cited in this voting form.

1 "In voting, I have marked and sealed my ballot in
2 private and have not allowed any person to observe my marking
3 of the ballot, except for those authorized to assist overseas
4 voters under state or federal law. I have not been influenced
5 in marking my ballot. My signature and date below indicate
6 when I completed this certificate. The information on this
7 form is true, accurate, and complete to the best of my
8 knowledge. I understand that a material misstatement of fact
9 in completion of this document may constitute grounds for a
10 conviction for perjury.

11 "Signed: _____ Date:

12 _____ "

13 Section 8. When an absentee ballot is sent to an
14 overseas voter, it shall include all of the following
15 instructions:

16 "(1) To ensure that your absentee ballot is counted,
17 it should be completed and returned to the absentee election
18 manager of the county of registration as soon as possible, and
19 not later than 12:00 noon on the day of the election.

20 "(2) The ballot should be marked in secret.

21 "(3) Only the number of candidates or issue choices
22 indicated on the ballot should be marked. If the ballot
23 instructs a voter to "vote for one" candidate, and you vote
24 for more than one candidate, your vote in that race will not
25 be counted.

26 "(4) For your ballot to be counted, you must also
27 complete an overseas voter certificate, which includes your

1 signature. Failure to include your signature will result in
2 your ballot not being counted.

3 "(5) An overseas voted absentee ballot may be
4 returned to the absentee election manager by facsimile, mail,
5 commercial ground or air carrier, or secure remote electronic
6 access, if such option is approved by the Secretary of State.
7 An overseas voted absentee ballot returned by standard
8 electronic mail shall be rejected.

9 "(6) If faxed, the voted absentee ballot and
10 overseas voter certificate shall be faxed to the number
11 provided by the absentee election manager or to a facsimile
12 number provided by the Federal Voting Assistance Program of
13 the Department of Defense. If the ballot and certificate are
14 faxed to the number provided by the Federal Voting Assistance
15 Program, the voter should ensure that there is sufficient time
16 for the Federal Voting Assistance Program to transmit the
17 ballot and certificate to the absentee election manager so
18 that it is received no later than 12:00 noon on election day.
19 By faxing a voted ballot, the voter voluntarily waives his or
20 her right to a secret ballot.

21 "(7) If mailed, the voted absentee ballot and
22 overseas voter certificate shall be mailed to the absentee
23 election manager as follows:

24 "a. Place the voted ballot in a sealed secrecy
25 envelope, which may have been provided in the original mailing
26 of the ballot by the absentee election manager. Anyone who has
27 received his or her unmarked ballot by facsimile or electronic

1 mail may place his or her voted ballot in an unmarked envelope
2 and seal the envelope.

3 "b. Insert the secrecy envelope inside a separate
4 mailing envelope. If the ballot was mailed to you, use the
5 mailing envelope provided and fill out the overseas voter
6 certificate on the back of the mailing envelope. If the ballot
7 was faxed to you or sent by electronic mail, place the sealed
8 secrecy envelope and the completed overseas voter certificate
9 in another envelope for mailing. Do not seal the overseas
10 voter certificate in the secrecy envelope with the ballot. The
11 mailing envelope should be clearly marked "Absentee Ballot
12 Enclosed."

13 "c. Mail the absentee ballot to the absentee
14 election manager with sufficient postage.

15 "(8) To vote and transmit a voted absentee ballot
16 and overseas voter certificate by secure remote electronic
17 access, carefully follow the supplemental instructions given
18 to you by the absentee election manager to ensure that your
19 ballot will be counted.

20 "(9) It is a crime under Alabama law to accept any
21 gift, payment, or gratuity in exchange for your vote for a
22 candidate. It is also a crime under Alabama law to vote in an
23 election using a false identity or false address, or under any
24 other circumstances making your ballot false or fraudulent."

25 Section 9. Processing returned absentee ballots.

26 (a) For each voted absentee ballot received from an
27 eligible overseas voter, the absentee election manager shall

1 record the date such ballot was received and the means by
2 which the ballot was returned.

3 (b) If any absentee overseas voter mails the voted
4 ballot to the absentee election manager in an envelope other
5 than an absentee ballot mailing envelope provided by the
6 absentee election manager, the absentee election manager shall
7 open the mailing envelope to determine if an overseas voter
8 certificate is enclosed. If an overseas voter certificate is
9 not enclosed, the secrecy envelope containing the ballot shall
10 not be opened and the envelope shall be marked "Rejected: No
11 Certificate." If the overseas voter certificate is enclosed,
12 the absentee election manager shall verify the eligibility of
13 the overseas voter and shall process the ballot.

14 (c) Upon receipt by facsimile of a voted absentee
15 ballot, the absentee election manager shall enclose the ballot
16 in a sealed envelope to preserve secrecy and attach the
17 overseas voter certificate to the sealed envelope. Upon a
18 determination by the absentee election official that the
19 overseas voter ballot is eligible to be counted, the ballot
20 shall be removed from the envelope and duplicated for
21 processing through tabulating equipment.

22 (d) Upon receipt by mail of a voted absentee ballot
23 that was originally sent via electronic mail or facsimile, the
24 overseas voter certificate shall be reviewed and, upon a
25 determination by the absentee election official that the
26 overseas voter ballot is eligible to be counted, the ballot

1 shall be removed from the envelope and duplicated for
2 processing through tabulating equipment.

3 (e) Upon receipt of a voted absentee ballot
4 transmitted by secure remote electronic access, the electronic
5 version of the overseas voter certificate shall be reviewed.
6 Upon a determination by the canvassing board that the overseas
7 voter ballot is eligible, the ballot shall be selected for
8 decryption and duplicated for processing through tabulating
9 equipment.

10 Section 10. All costs associated with this act shall
11 be drawn from funds made available to the Secretary of State
12 pursuant to state and federal law.

13 Section 11. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.